

EXPLANATORY STATEMENT

Australian Education Act 2013

Australian Education Amendment (2018 Measures No.1) Regulations 2018

Authority

Subsection 130(1) of the *Australian Education Act 2013* (the Act) empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed by the regulations, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Legislative background

The Act is the principal legislation by which the Australian Government provides Commonwealth financial assistance for schools.

The *Australian Education Regulation 2013* (the Principal Regulation) contains a number of provisions to ensure the correct calculation, indexation and setting of Commonwealth financial assistance for schools, and for the effective and efficient administration of that financial assistance.

The Act and Principal Regulation commenced on 1 January 2014.

Financial assistance under the Act is provided to states and territories for distribution to approved authorities for government and non-government schools, block grant authorities for non-government schools (in order to provide capital funding for capital projects at such schools), and non-government representative bodies for non-government schools. Entities approved to receive Commonwealth financial assistance under the Act, including states and territories in their capacity as approved authorities for government schools, must meet and maintain the conditions of approval outlined in the Act.

The Principal Regulation prescribes a range of matters concerning:

- the interpretation of provisions in the Act
- conditions of grants of Commonwealth financial assistance to states and territories under the Act
- matters relevant to Commonwealth financial assistance for schools, including matters relevant to the calculation of that financial assistance
- matters relevant to the provision of prescribed circumstances funding under the Act
- matters relevant to the basic requirements of approval for approved authorities, block grant authorities, and non-government representative bodies
- matters relevant to the ongoing requirements of approval for approved authorities, block grant authorities, and non-government representative bodies
- matters relevant to the ongoing policy requirements of approval for approved authorities

- matters relevant to actions the Minister may take for failure to comply with the Act or the Principal Regulation
- other matters relevant to carrying out or giving effect to the Act.

Purpose and operation of amendments

The purpose of the *Australian Education Amendment (2018 Measures No. 1) Regulations 2018* (the Amendment Regulation) is to amend the Principal Regulation to set the maximum amount of capital funding available for block grant authorities for non-government schools for 2018, and therefore the total amount available to be distributed to such authorities in order to support capital projects at non-government schools.

The Amendment Regulation sets the maximum amount of capital funding available for 2018 at \$150,895,000, an overall increase of \$8,196,000 compared to such funding available for 2017.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation has agreed a RIS is not required for the Amendment Regulation (OBPR ID 21846).

Commencement

The Amendment Regulation commences on the day after it is registered on the Federal Register of Legislation.

Consultation

The Minister for Education and Training wrote to the Independent Schools Council of Australia and the National Catholic Education Commission, as the peak representative bodies for the non-government school sector, informing and requesting feedback on the Amendment Regulation. States and territories were also informed of the Amendment Regulation.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*
Australian Education Amendment (2018 Measures No.1) Regulations 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

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Human rights implications

The Amendment Regulation engages the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and Articles 28 and 29 of the *Convention on the Rights of the Child* (UNCRC).

Right to Education

The Amendment Regulation engages the right to education in Article 13 of the ICESCR. Article 13 recognises the right of everyone to education, which is directed towards the full development of the human personality and the sense of its dignity, and to enable all persons to participate effectively in society. It also recognises the liberty of parents and guardians to choose non-government schools for their children's education, provided those schools conform to minimum educational standards. The right to education for children is also found in Articles 28 and 29 of the UNCRC.

The Amendment Regulation increases the amount of capital funding available for block grant authorities for use in providing financial support for capital projects at non-government schools. The provision of capital funding will help assist non-government schools to develop improved and enhanced educational facilities, broaden their school education offering, and provide quality educational outcomes to their students. This measure is compatible with the right to education and promotes the right to education.

Conclusion

The Amendment Regulation is compatible with human rights because it advances the protection of human rights.

Simon Birmingham
Minister for Education and Training

Detailed explanation of the Amendment Regulation provisions

Section 1 – Name of Amendment Regulation

This section provides that the title of the Amendment Regulation is the *Australian Education Amendment (2018 Measures No. 1) Regulations 2018*.

Section 2 – Commencement

This section provides for the commencement of the provisions of the Amendment Regulation. The provisions of the Amendment Regulation commence on the day after the Amendment Regulation is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Amendment Regulation is made under the *Australian Education Act 2013*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments

Item 1 inserts section 24AA into the Principal Regulation. Section 24AA prescribes the base assistance amount of capital funding for 2018, that is, \$150,895,000. Section 24AA is made for the purposes of section 68 of the *Australian Education Act 2013* (the Act).

Section 68 of the Act sets a limit on the total amount of capital funding that can be provided for block grant authorities for non-government schools for a year (the base assistance amount). Section 68 provides that the base assistance amount for a year can be set either through prescribing an amount in the Principal Regulation, see paragraph 68(1)(b)(ii), or by indexing the previous year's base assistance amount in accordance with subsections 68(2) and (3), see paragraph 68(1)(b)(i).

For 2018, the base assistance amount is prescribed in the Principal Regulation, through section 24AA. The amount prescribed has been informed by the growth in non-government school student enrolments over the period 2009-2017, and the index specified in section 24B of the Principal Regulation.